

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-40266 CBS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff

v.

TOWN OF NORTH BROOKFIELD,

Defendant

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED
MATERIAL FACTS REGARDING MOTION FOR PARTIAL SUMMARY JUDGMENT AS
TO CLAIMS FOR DIRECT PAYMENT

I. DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS

FACTS WITH RESPECT TO MILLIS PLUMBING

1. Admitted for purposes of summary judgment.
2. Admitted for purposes of summary judgment.
3. Denied. The April 9, 2003 letter indicates that the demand includes work requisitioned through March 20, 2003. See Affidavit of Deborah S. Griffin in support of plaintiff's Motion for Partial Summary Judgment as to Claims for Direct Payments, Exhibit A ("Griffin Affidavit").
4. Admitted for purposes of summary judgment.
5. Admitted for purposes of summary judgment.
6. Denied. The requisition specifically indicates that it only covers the period through March 28, 2003. See Griffin Affidavit, Exhibit E.

7. Denied. The requisition specifically indicates that it only covers the period through March 28, 2003. See Griffin Affidavit, Exhibit E.

8. Admitted for purposes of summary judgment.

9. Admitted for purposes of summary judgment.

10. Admitted for purposes of summary judgment.

11. Admitted for purposes of summary judgment.

12. Admitted for purposes of summary judgment.

13. Admitted for purposes of summary judgment.

14. Admitted for purposes of summary judgment.

15. Admitted for purposes of summary judgment.

16. Admitted for purposes of summary judgment.

17. Admitted for purposes of summary judgment.

18. Admitted for purposes of summary judgment.

19. Admitted for purposes of summary judgment.

20. Admitted for purposes of summary judgment.

21. Admitted for purposes of summary judgment.

22. Admitted for purposes of summary judgment.

23. Admitted that AMMIC entered into a Ratification Agreement with Millis Plumbing.

24. Admitted only that, based upon Exhibit J to the Griffin Affidavit, AMMIC and Millis Plumbing entered into a Ratification Agreement dated August 25, 2003 stating that Millis Plumbing was owed \$66,085.33.

25. Admitted only that if the Town had paid Millis Plumbing \$31,505.85, the amount claimed by Millis Plumbing as owed to it would have been reduced by \$28,144.04.

ADDITIONAL FACTS WITH RESPECT TO GREENWOOD INDUSTRIES

26. Admitted for purposes of summary judgment.
27. Admitted for purposes of summary judgment.
28. Admitted for purposes of summary judgment.
29. Denied. The requisition specifically indicates that it only covers the period through March 28, 2003. See Griffin Affidavit, Exhibit E.
30. Denied. The requisition specifically indicates that it only covers the period through March 28, 2003. See Griffin Affidavit, Exhibit E.
31. Admitted for purposes of summary judgment.
32. Admitted for purposes of summary judgment.
33. Admitted for purposes of summary judgment.
34. Admitted for purposes of summary judgment.
35. Admitted for purposes of summary judgment.
36. Admitted for purposes of summary judgment.
37. Admitted for purposes of summary judgment.
38. Admitted for purposes of summary judgment.
39. Admitted for purposes of summary judgment.
40. Admitted only that Sciaba made a payment of \$100,700.49 to Greenwood and that the Town made a payment of \$31,350.00 to Greenwood. The Town denies that AMMIC suffered any prejudice and denies that Greenwood was entitled to payment from the Town in the amount of \$137,350.00.
41. Admitted for purposes of summary judgment.
42. Admitted that AMMIC entered into a Ratification Agreement with Greenwood.

43. Admitted only that, based upon Exhibit R to the Griffin Affidavit, AMMIC and Millis Plumbing entered into a Ratification Agreement dated October 22, 2003 stating that Millis Plumbing was owed \$66,085.33.

II. DEFENDANT'S STATEMENT OF ADDITIONAL MATERIAL FACTS REGARDING CLAIMS FOR DIRECT PAYMENT

1. In connection with the Contract, AMMIC, as surety, and Sciaba, as principal, executed and delivered to the Town a payment bond in the penal sum of \$13,222,000.00. A copy of the Payment Bond is attached to the Affidavit of Lee P. Dore as Exhibit B.

TOWN OF NORTH BROOKFIELD

By its attorneys,

/s/Thomas W. McEnaney
David J. Doneski (BBO# 546991)
Thomas W. McEnaney (BBO# 629130)
Kopelman and Paige, P.C.
Town Counsel
31 St. James Avenue
Boston, MA 02116
(617) 556-0007

271099/NBRO-HS/0019